

**State of Idaho**

**Department of Water Resources**

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866

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**Date:** October 28, 2003

**To:** Bob Duke  
Water District 34  
Fax: 208-588-2863

**From:** Laurel Walker *for* Jennifer Berkey  
Water Distribution  
lwalker@idwr.state.id.us  
327-7907

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Attached is a 2 page letter from Jennifer Berkey to you. If you have any questions Jennifer can be reached at 208-327-7871.

Thank you.

Handwritten signature of Laurel Walker in cursive script.



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

October 28, 2003

Robert Duke, Watermaster  
Water District 34  
P.O. Box 53  
Mackay, ID 83251

VIA FACSIMILE  
c/o Big Lost River Irrigation District 208-588-2863

Dear Mr. Duke:

As you have requested, this letter is intended to provide written documentation of our telephone discussion on October 9, 2003 regarding the delivery of winter stock water in Water District 34. As we discussed, our Adjudication staff are preparing a formal memorandum providing direction on the delivery of winter stock water. The memorandum will discuss the legal and policy basis for winter stock water deliveries in Water District 34. This letter is intended to provide you with interim directions for delivery of winter stock water, which we anticipate will be consistent with the forthcoming memorandum.

As you noted, a number of water rights within Water District 34 were decreed with the comment, "The appropriator is entitled to the quantity of water described for stock water purposes at a point of measurement where the delivery ditch enters the place of use described." For water rights decreed with this comment, the flow rate delivered at the diversion heading may exceed the stock water flow rate if necessary to supply the stock water flow rate where the delivery ditch enters the place of use described by the water right. However, water delivered in excess of the stock water flow rate must not result in unreasonable waste of water, must be necessary to compensate for conveyance loss in the ditch, and may not be stored, used to increase soil moisture, or used for any type of beneficial use. Further, the flow rate delivered at the heading may not exceed the total flow rate of the water right.

For water rights that provide for winter stock water, but do not include the comment referenced in the paragraph above, the flow rate at the diversion heading must be restricted to the winter stock water flow rate, regardless of conveyance losses. Stock water may not be delivered at points of diversion or places of use that are not authorized by a water right that specifies winter stock water as a use. Incidental stock water use is only allowed during the irrigation season of use.

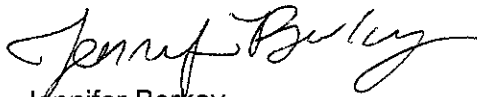
As with irrigation water, stock water may only be delivered when the water right is in priority. For stock water rights below Mackay Reservoir, the general provisions define

the minimum winter release from Mackay Reservoir. Stock water rights below the reservoir may be called for and delivered if it does not interfere with storage in Mackay Reservoir by requiring a release of water in excess of the minimum release required at the 2b gauge, or the actual release of water, whichever is greater. A water right holder calling for delivery of winter stock water must have access to a point of diversion and delivery system to convey the right to the place of use. If the head gate and delivery system are controlled by an entity other than the water user, the water master will only deliver the water with the concurrence of the owner of the head gate and delivery system and then only when such delivery does not constitute unreasonable waste as determined by the Director.

For stock water rights above Mackay Reservoir, stock water may only be delivered to water rights that are senior to the unfilled reservoir storage rights. For example, until water right 34-10873 has been filled, stock water rights senior to October 2, 1905 may be delivered, but stock water rights junior to this date may not be delivered. After water right 34-10873 has been filled, stock water rights senior to February 7, 1916 may be delivered, but water rights junior to this date may not be delivered until after water right 34-00012 has been filled.

Please contact me if you have any questions regarding this letter. I will forward a copy of the formal memorandum to you when it is available.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Berkey".

Jennifer Berkey

Water Distribution Section

**HP OfficeJet G Series G95**  
**Personal Printer/Fax/Copier/Scanner**

**Fax-History Report for**  
**IDWR**

Oct 28 2003 5:32pm

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**Last Fax**

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Oct 28	5:30pm	Sent	9-12085882863---8093	1:54	3	OK

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**Result:**

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Okay color - color fax